

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 63 of 1994

in

FIRST APPEAL No 298 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PRABHAKAR RAMCHANDRA JADAV

Appearance:

LETTERS PATENT APPEAL No. 63 of 1994

Mr V M Pancholi, AGP for Appellants

MR IS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 05/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The appellants-above named, have preferred this Letters Patent Appeal under Clause 15 of the Letters Patent, against the judgment and order dated 28.6.1992 recorded by the learned Single Judge in First Appeal No.298/88, under which the learned Single Judge was pleased to dismiss the aforesaid First Appeal, directing the parties to bear their own costs in the appeal. The facts leading to this LPA may be, briefly, stated as follows:

The respondent, herein, was initially appointed as Police Head Constable on or about 5.10.1950 by the Police Commissioner of the erstwhile State of Kachchh. He passed the qualifying examination for the post of Head Constable in 1952. The said examination was conducted by the District Superintendent of Police of Kachchh. It appears that thereafter, in 1955, other 4 Police Head Constables, similarly situated, were promoted to the post of Police Sub-Inspector, but the respondent herein, was not promoted to the said post. It seems, his case was not considered for the said post of promotion. Thereafter, the respondent, herein, again passed the examination for the Head Constable in the year 1966 and as such he was promoted to the post of Police Sub-Inspector. Again in 1973, he was promoted to the post of Police Inspector. He instituted a Civil Suit being Civil Suit No.3902/84 in the City Civil Court, Ahmedabad since he was not promoted as PSI in the year 1955. The aforesaid civil suit was resisted on behalf of the appellants, abovenamed. The learned trial Judge framed necessary issues and after affording opportunity to lead evidence to the parties, the learned trial Judge was pleased to pass decree in favour of the respondent. Under the said decree, it was declared that the act of the present appellants, in not promoting the present respondent to the post of PSI in the year 1955 is illegal, arbitrary and unconstitutional and hence not maintainable at law. The learned trial Judge further directed the present appellants to accord deemed date of promotion to the present respondent to the post of PSI from the year 1955, when other persons named in the decree were promoted as PSI. The learned trial Judge further directed the present appellants to accord deemed date of promotion to the present respondent to the post of P.I. from 1973, when the persons named in the decree were promoted as P.I. It was further directed the present appellant to pay to the respondent all

consequential benefits consequently to the above according of deemed date, such as salary, allowances etc. and pensional and other benefits, as per rules. The learned trial Judge further directed the present appellant to pay cost of the suit to the respondent and to bear their own cost in the suit. The aforesaid judgment and decree of the learned trial Judge of the City Civil Court, Ahmedabad dated 22.7.1987, were carried in First Appeal being First Appeal No.298/88 before this Court. This court, heard the parties and by judgment and order dated 28.6.1993, dismissed the said appeal of the appellant above named.

2. Being aggrieved by the said judgment and order of this Court in the said First Appeal, the appellants herein, have preferred this LPA under Clause 15 of the Letters Patent.

It has been mainly contended here that the learned Trial Judge as well as the learned Single Judge of this Court have committed serious error in not considering that the suit was apparently time-barred and that it was barred by delay, laches and acquiescence. It has further been contended that the learned trial Judge as well as the learned Single Judge of this Court has not properly considered the fact that they had not directed the appellants to consider the case of the present respondent for promotion. That instead, there is a direct decree of according deemed date which is not legal and valid. It has further been contended that the judgment and decree of the learned trial Judge and confirmed by the learned Single Judge of this Court, are otherwise also illegal, erroneous and deserve to be set aside. It is therefore, contended that the present appeal be allowed and the judgment and decree of the learned Single Judge of this Court as well as the judgment and decree of the learned trial Judge be quashed and set aside and the suit of the present respondent be ordered to be dismissed with costs all through out.

3. The appeal was admitted. Mr I S Supheia, learned Advocate appears on behalf of the respondent. We have heard the learned Advocates for the parties and have perused the papers. The learned AGP, as well as the learned Advocate for the respondent have taken us through the record of this appeal. In support of the contention, Mr V M Pancholi, learned AGP appearing for the appellants has argued that the respondent claimed promotion with effect from the year 1955 and the suit was filed as late as in 1984. That therefore, the suit was clearly barred by limitation and it was further barred by principles of

delay, latches and acquiescence. We have given our anxious thoughts to this submission of the learned AGP. But after due consideration, we are not in a position to agree with the said submission of the learned AGP. For the said purpose, we have gone through the judgment of the learned trial Judge of the City Civil Court and there we find that the learned trial Judge had raised four issues for determining the said suit. However, we do not find that there is an issue of limitation or that there is an issue of delay, latches and acquiescence. This shows that the aforesaid contentions were not raised before the learned trial Judge. In that view of the matter, when this question has not been raised before the original court, it is extremely difficult to accept such contention when they are raised for the first time in Letters Patent Appeal. It is well settled that an issue of limitation is a mixed question of facts and law. Therefore, when disputed questions of facts are involved for the purpose of deciding the said issue of limitation, then it is not possible for us to deal with the said issue in this LPA. It is more so, when the issue was not raised or contested before the trial court. No issue was framed, no evidence was led on the said issue and there is no finding recorded by the learned trial Judge on the said issue. Therefore, in absence of any issue, the evidence or finding of the learned trial Judge it is not just, legal or proper to decide the said issue of facts in absence of any material on record. This issue does not appear to have been raised before this Court in the First Appeal. We are, therefore, not inclined to permit the learned AGP to advance arguments on this issue involving disputed questions of facts in absence of any material issue on findings of the two Courts.

4. Similar is the case of delay, latches and acquiescence. Even on this aspect, no issue has been framed and no evidence has been led by the parties before the trial court. The trial court has not recorded any finding on the said issue. In absence of any issue or finding on such an issue by the trial court, it is not possible to deal with the said issue for the first time in this LPA. Suffice it to say that in absence of any material, we are not in a position to deal with and accept the said argument advanced on behalf of the appellants by the learned AGP. We are, therefore, left with no alternative but to reject the said contention raised on behalf of the appellants.

5. It has, next, been contended that even if the learned trial Judge as well as the learned Single Judge of this Court felt that the case of the respondent was

not considered, then in that event, proper course for the said two courts was to direct the appellants to consider the case of the respondent for promotion. That in that case, the appellants would have considered the case of the respondent for promotion and would have passed appropriate order on merits. Ordinarily, this argument would have been accepted by this court also. But the fact remains that it is an admitted position that the promotion was required to be released on the basis of seniority-cum-suitability. It is also an admitted position that there is absolutely nothing adverse against the respondent on record. There was some doubt about the fact whether the respondent had passed the necessary examination before the year 1955 but Mr V M Pancholi, learned AGP, has fairly conceded that an entry has been made in the service book of the respondent that the respondent had passed necessary examination in the year 1952. In that view of the matter, when there is no adverse remark in the Confidential Report of the respondent and when there is nothing adverse against him in service record and when the respondent had already passed the required examination in 1952 and also when other four persons similarly situated, have already been promoted in 1955, then there is nothing left for consideration of the appellant. In that view of the matter, it cannot be said that the appellants could have taken a different view or a different position in respect of the promotion of the respondent, if a direction was given to them to consider the case of the respondent for promotion. Therefore, no useful purpose could have been served even if such a direction had been given to the appellants to consider the case of the respondent for promotion. Therefore, simply because such a direction has not been given by the learned trial Judge and the learned Single Judge, it cannot be said that this court should interfere with the aforesaid decision and decrees of the two courts while exercising powers under clause 15 of the Letters Patent. Ordinarily such a direction is issued to the competent authority in cases in which there would be some likelihood of taking a different decision. Some times the dates for promotion are different, some times records are required to be examined and some times, it is required to be ascertained whether there is any adverse entry in the Annual Confidential Report of the concerned servant/officer. Some times, it so happens that even the fact of passing of examination is required to be ascertained. Some times the eligibility criteria is also required to be examined. In such circumstances, certainly a direction has to be given to the competent authority to consider the case in respect of a particular individual. But when the facts are almost admitted, then

it cannot be said that some useful purpose would have been served, had there been any direction to the appellants to consider the case of the respondent for promotion.

6. Therefore, the judgment and decree recorded by the learned trial Judge which are confirmed by the learned Single Judge of this Court in First Appeal as stated above, cannot be lightly quashed and set aside on the aforesaid contention while exercising powers under clause 15 of the Letters Patent.

7. Viewing the matter from the another angle, it is very clear that the respondent had admittedly cleared the examination in 1952 along with the other 4 persons. Those four persons have already been promoted in 1955 after clearing the examination. Probably the fact of passing examination by the respondent was not properly noticed by the appropriate authority at the relevant point of time. This was after all an administrative error on the part of the department, which has to be rectified by appropriate orders when the matters come to the court.

8. The last submission of learned AGP is that the examination conducted by the DSP of the erstwhile State of Kachchh, was not properly conducted. We have not been shown any rule governing the said examination. In that view of the matter, in our opinion, it cannot be held for the first time in this LPA that the examinations were not properly conducted, or they were not conducted by the competent authority. In absence of any rule governing the said examination, no such finding can be arrived at and the aforesaid argument cannot be considered in absence of any rules governing such examination. In absence of any such rules, it is not possible for us to agree with the arguments advanced by the learned AGP that the examinations were not properly conducted or they were not conducted by the appropriate authority. It has to be seen that four other persons, on clearing the said examination, were already promoted. When 5 persons cleared the examinations and four of them have been promoted, there cannot be any discriminatory treatment to be extended to the present respondent. He could not have been singled out. Even otherwise also there is nothing on record to show that the examinations were not properly conducted or that they were not conducted by the competent authority and, therefore, there is no reason to deprive the present respondent from being promoted to the post of PSI w.e.f. 1955.

9. We find that there is no merit in the present appeal. The learned trial Judge has properly dealt with all the issues raised before her elaborately. Even the learned Single Judge of this court has also properly dealt with all the questions raised before him. We have not been shown that the findings recorded by them are illegal and erroneous and in that view of the matter, there is no merit in this appeal and it deserves to be dismissed.

10. No other contention was raised on behalf of the appellants. Therefore, the present appeal is, therefore, ordered to be rejected. The interim relief stands vacated. However, considering the facts and circumstances, there shall be no order as to costs.

Before parting with this judgment, it is required to be observed that though the respondent was required to be promoted as per the decree of the learned trial Judge, has not been retrospectively promoted. Therefore, we direct the appellants to accord deem date of promotion to the respondent in accordance with the direction contained in the decree of the trial court within four months from the date of receipt of this order. Direct Service is permitted.

5.12.2000 [J N Bhatt, J.]
msp.

[D P Buch, J.]